

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8248 of 1997

and

SPECIAL CIVIL APPLICATION No 655 of 1998

and

SPECIAL CIVIL APPLICATION No 1697 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No
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VARDHMAN JAIN PEDHI (JAMBUDWIP)

Versus

STATE OF GUJARAT

Appearance:

MR GAURANG H BHATT for Petitioner
GOVERNMENT PLEADER for Respondent No. 1 & 2
M/S.VYAS ASSOCIATES for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 04/08/98

COMMON ORAL JUDGEMENT

All these three petitions raise common questions of law and fact and, therefore, with consent of the learned counsel for the parties, these three petitions are taken up together for final disposal today as per advance notice given to the learned counsel earlier.

2. The petitioners and two other persons had applied to respondent No. 3 - Palitana Municipality to provide certain lands as per the applications made by the petitioners and others in the year 1992-93. The meeting of the councillors of the Municipality was held on 4.2.1993 and by a resolution passed at the said meeting, five parcels of lands of different areas were allotted to the present three petitioners and two other persons. As per the said resolution, the Municipality directed the petitioners to pay sale price. The petitioners paid the respective sale price as per the details given hereunder:-

Spl.C.A. No.	Area Allotted	Total & payment	Date of sale deed
Rate	Rs.		
8248/98	435.88 sq.mtrs.	52,305-60	9.2.1993
Rs.120/- per Sq.Mtr.			
655/98	449.50 sq.mtrs.	26,880-00	Feb.,1993
Rs. 50/- per sq.mtr. as the petitioner belongs to SC			
1697/98	180 sq.mtrs.	18,000-00	17.2.1993
Rs.100/- per sq.mtr.			

The Municipality also executed sale deeds in favour of the petitioners and others on 9.2.1993 and the petitioners were put in possession of the lands in question. The petitioners were accordingly took possession of the lands in question and constructed shops and other premises. The petitioners in Special Civil Application No. 655 of 1998 and Special Civil Application No. 1697 of 1998 have already constructed industrial shed/other premises for making use on the respective lands and all the petitioners have been using the lands in question from the date on which they were put into possession of the lands.

3. It appears that the Assistant Collector, Palitana submitted report to the Collector, Bhavnagar about the aforesaid meeting of 4.2.1993 and by his order dated 24.2.1993, the Collector, Bhavnagar exercising power under Section 258 of the Gujarat Municipalities Act, 1963 (hereinafter referred to as "the Act") granted ex-parte

ad-interim stay against operation of the resolution dated 4.2.1993 passed by the Municipality. The Municipality accordingly directed the petitioners to restore the original position of the land before passing of the resolution dated 4.2.1993. On 7.6.1993, the Collector quashed and set aside the resolution passed by the Municipality on 4.2.1993 in respect of the allotment of lands to the present three petitioners as well as to other two persons who are not before the Court. The aforesaid order was passed on the basis that no meeting of the Municipality was held on 4.2.1993 and, therefore, the resolution itself was cancelled.

On 31.7.1993, the Municipality passed a resolution to oppose the decision of the Collector and the report of the Assistant Collector on the ground that the meeting of the councillors was not held in the regular hall, but in the chamber of the President, because repairs and renovation work was going on in the meeting hall. The petitioner of Special Civil Application No. 8248 of 1997 preferred Special Civil Application No. 8206 of 1994 challenging the order of the Collector and the same was allowed on the ground that the order was passed without hearing the petitioner. Similar petitions were filed by other two petitioners as well and in their case also, similar order was passed. Accordingly, the Collector issued show cause notices to the petitioners and, thereafter, on 20.2.1997, the Collector, after hearing the petitioners, reiterated his earlier conclusion that there was no meeting of the Municipality held on 4.2.1993 and, therefore, the resolution passed by the Municipality for allotting the lands in question to the petitioners was set aside. The petitioners herein preferred revision applications before the State Government for challenging the aforesaid order of the Collector, Bhavnagar. The revision applications filed by the three petitioners herein were dismissed by the State Government by orders dated 1.10.1997 in Special Civil Application Nos. 8248 of 1997 and 655 of 1998 and by order dated 27.1.1998 in Special Civil Application No. 1697 of 1998. The petitioners are aggrieved by the aforesaid orders of the State Government as confirming the order dated 20.2.1997 of the Collector, Bhavnagar setting aside the resolution passed by the Municipality on 4.2.1993.

4. The other two allottees, referred to hereinabove, i.e. Jayaben M. Maru and Keshavbhai L. Maru did not challenge the Collector's order dated 7.6.1993 before this Court, but filed revision before the State Government. Revision application No. 42/95 filed by

Jayaben Mitthabhai Maru and Keshavbhai Lakhabhai Maru was allowed by the State Government on the ground that the Collector had no power under Section 258 of the Act to set aside the resolutions passed by the Municipality after it was already implemented. That order is produced at Annexure "E" to Special Civil Application No. 1697 of 1998. That order was passed by the State Government earlier in December, 1995.

5. At the hearing of these petitions, the learned counsel for the petitioners have submitted that even according to the Municipality the meeting was held on 4.2.1993 but it was held in the chamber of the President instead of regular meeting hall. On account of the change in the meeting place, it cannot be said that the resolution passed by the Municipality was illegal. It is further submitted that in case this Court holds that the valuation of the price of the lands in question was not properly done, the petitioners are prepared to pay the price according to the valuation that may be made by the Deputy Town Planner provided the petitioners are given an opportunity to point out the relevant sale instances to show the market value of the land as on 4.2.1993 which was the date on which the Municipality passed the resolution. It is submitted that the respondents should not be permitted to make valuation of the land as on today because naturally there is bound to be upward escalation of the price of the land in the course of the last five years.

6. Mr DD Vyas, learned counsel appearing for the respondent-Municipality has submitted that the meeting of the councillors was held on 4.2.1993 and that if at all anything objectionable was there, it was only about valuation of the land in question. Hence, the Municipality has no objection if the appropriate directions are given for valuation of the land as on 4.2.1993.

7. Mr Mankad and Mr Joshi, learned AGPs have submitted that in view of the report of the Assistant Collector, the Collector was justified in giving finding that the meeting was not held on 4.2.1993.

8. Having heard the learned counsel for the parties and also having regard to the fact that in revision application No. 42/95, the State Government has already rendered the decision allowing the appeal of Smt. Jayaben Maru and Keshavlal L. Maru cancelling the order of the Collector dated 7.6.1993 and the Collector's order dated 7.1.1995 in so far as the allotment made in favour

of the aforesaid two appellants was concerned, it would be incongruous for all the parties concerned to hold that while the disputed meeting of the Municipality was held on 4.2.1993 for Jayaben Maru and Keshavlal Maru, it was not held in respect of the lands for the present three petitioners. The Court, therefore, will have to set aside the finding given by the Collector as confirmed by the revisional authority that the meeting was not held on 4.2.1993. When the Municipality has come out with a case that the meeting was held in the Chamber of the President, but not in the regular hall on account of the repairs and renovation and when the Municipality has taken a reasonable stand that the allottees were directed to pay the market value as on 4.2.1993 and also when the sale deeds were executed as far back as in February, 1992 and the petitioners were put in possession of the lands in question and when they are carrying on business activities on the lands in question since last five years, it would be just and proper to set aside the impugned orders of the Collector and the State Government in revision application and to hold that the meeting of the Municipality was held on 4.2.1993, but the resolution passed by the Municipality at the said meeting for allotting the lands in question to the petitioners is required to be modified to the effect that the petitioners shall pay market value of the lands in question as on 4.2.1993. It is required to be noted that the petitioners through their respective learned counsel have agreed to pay the market value of the lands in question as on 4.2.1993 as may be determined by the Town Planning Department after giving the petitioner an opportunity of being heard.

9. The order dated 7.6.1993 of the Collector, Bhavnagar and the orders passed by the State Government in revision which are challenged in these petitioners are quashed and set aside. It is further directed that within three months from the date of receipt of a certified copy of this order, the Collector shall get the market value of the lands in question in Palitana as on 4.2.1993 assessed by the Town Planning Department. After considering the relevant material for determining the value of the lands in question as on 4.2.1993 including such material as may be produced by the petitioners, the concerned officer of the Town Planning Department shall submit his report to the Collector who will take the final decision regarding the valuation of the lands in question as on 4.2.1993 within two months from the date of receipt of the report from the Town Planning Department and the petitioners shall pay the same within two months from the date of receipt of the decision of

the Collector.

10. Rule is made absolute to the aforesaid extent.
There shall be no order as to costs.

Sd/-

August 4, 1998 (M.S. Shah, J.)